

APPEAL NO. 040569
FILED APRIL 26, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 23, 2004. The hearing officer determined that the compensable injury of _____, extends to the lumbar spine including the L5-S1 spondylolisthesis. The appellant (self-insured) appeals this determination on sufficiency of the evidence grounds and asserts that the hearing officer improperly considered material not in evidence. The respondent (claimant) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the compensable injury of _____, extends to the lumbar spine including the L5-S1 spondylolisthesis. It is undisputed that the claimant had preexisting L5-S1 spondylolisthesis. At issue was whether that condition was aggravated in the course and scope of the claimant's employment on _____. This involved a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer considered the evidence and found that the claimant sustained a worsening of her preexisting spondylolisthesis in the work-related incident of _____. In view of the medical reports from the claimant's orthopedic surgeon and the claimant's testimony, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The self-insured asserts that the hearing officer improperly considered material not in evidence, in reaching his determination. In his discussion of the evidence, the hearing officer states, "Spondylolisthesis is a condition that can be sustained either traumatically or by degenerative processes, and certainly may be aggravated by either process." The self-insured argues that there is no evidence to support the hearing officer's statement that spondylolisthesis may be caused by either a traumatic or degenerative condition. While we do not disagree with the self-insured, the operative portion of the hearing officer's statement concerns whether spondylolisthesis may be *aggravated* by a traumatic injury, since the claimant asserted an aggravation injury in the course and scope of her employment. Based upon the reports of the claimant's orthopedic surgeon, the hearing officer could find that the claimant's preexisting spondylolisthesis was, indeed, aggravated by the traumatic event on _____.

As stated above, this determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is, **a governmental entity that self-insures, either individually, or collectively through the Texas Association of School Boards Risk Management Fund** and the name and address of its registered agent for service of process is

LR
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Edward Vilano
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Veronica L. Ruberto
Appeals Judge